the insurance shall not inure to the benefit of any carrier. In either case the carrier may, of course, be protected by taking out a policy directly upon its own interest in the goods.

It will be noticed that the policy in the principal case, antedated the contract of carriage. Whether a similar warranty, in a policy issued subsequently to the date of the bill of lading, would have the same force, yet remains to be decided. The principles laid down in the various decisions here considered, would seem, however, to require an affirmative answer to this question.

A novel question, involving some of the subjects under discussion, arose in *Kidd* v. *Greenwich Ins. Co.*, C. Ct. U. S., S. D. N. Y. (1888), 35 Fed. Repr. 351. The insurance was upon certain barrels of spirits and covered the excess of value above $20 per barrel, less a stipulated amount to be deducted in lieu of average. The policy provided that the insured, by accepting payment, would assign and transfer to the insurer all his claim, by reason of the loss, against the carrier or others, to the extent of the amount paid him, and that any act of the insured, waiving or tending to defeat or decrease any such claim, whether before or after the insurance, would operate to cancel the policy. The insurer entered into an agreement with the carrier that the spirits should be carried at a stipulated valuation of $20 per barrel, the actual value being over $97. The goods were burned while in transit, and the owner received from the carrier payment at the rate of $20 per barrel. He then brought suit against the insurance company for his loss in excess of that amount. Defense was made on the ground that, under the provisions of the policy which have been cited, the agreement to restrict the carrier's liability rendered the contract of insurance void. But the Court (WHEELER, J.) held that these provisions of the policy did not mean "that all liability of the carrier, which might arise, shall be insisted upon and created and not diminished from what it would be without special contract, but that the claim against the carrier, as it actually exists in favor of the insured, shall not be waived or diminished, and shall inure to the benefit of the insurer. The policy does not provide that any liability of the carrier shall be perfected, but that, if one is perfected, it shall remain for the benefit of the insurer." Recovery was, therefore, allowed. In view of the later decisions, cited above, the soundness of this rule must be considered doubtful.

JAMES C. SELLERS.

Supreme Court of Michigan.

BURTON v. TUITE.

A statute declared that the custodians of municipal records should furnish proper and reasonable facilities for the inspection and examination of the records and files in their respective offices, to all persons having occasion to examine them for any lawful purpose, and also for making memoranda or transcripts therefrom during business hours. *Held*, that under this statute, a person making and dealing in abstracts of title has the right to examine the tax sales books in the city treasurer's office.

The receiver of taxes in Detroit makes up an annual statement of his sales for unpaid taxes and delivers it to the city treasurer, who notes therein such redemptions as may be made, or the sale of any tax-bids. This statement is not one that

is required by law. *Held*, that it is nevertheless a public record, and therefore open to public inspection by citizens.

A public municipal corporation, like a city, can have no private books, not even of accounts, that are not open to the inspection of its citizens.

The doings of a municipal corporation, and the doings of its officers, and the records and files in their offices, must be open to public inspection by its citizens, without charge.

It has never been a common law rule in the United States, that the public had no right of free access to the public records, and to the public inspection thereof. And no special interest in the subject-matter of the record need be shown, to entitle one to such right.

A statute which confers a right upon "all persons," confers it upon any person. *Webber* v. *Townley*, 43 Mich. 534, overruled.

A public officer has no exclusive right, as against other citizens, to search the records in his charge; and he has no right to exact fees for searches made, unless they are made by himself or his subordinates.

Henry A. Chaney (*Hoyt Post* with him), for relator.

John W. McGrath and *Edward Minock* for respondent.

MORSE, J., December 28, 1889. The relator asks for the writ of mandamus, to compel the respondent to permit him to inspect and examine the records and files in the City Treasurer's office at Detroit, and to furnish proper and reasonable facilities for such inspection and examination, and for making memoranda and transcripts from such files and records, in compliance with Act No. 205 of the Public Acts of 1889.

The Act in question reads as follows—

"That the officers having the custody of any county, city or town records in this State, shall furnish proper and reasonable facilities for the inspection and examination of the records and files in their respective offices, and for making memoranda or transcripts therefrom, during the usual business hours, to all persons having occasion to make examination of them for any lawful purpose. *Provided*, That the custodian of said records and files may make such reasonable rules and regulations, with reference to the inspection and examination of them, as shall be necessary for the protection of said records and files, and to prevent the interference with the regular discharge of the duties of such officer. *And provided further*, That such officer shall prohibit the use of pen and ink, in making copies or notes of records and files:" Public Acts of 1889, p. 286.

Relator shows in his petition that he is engaged in the abstract business in the city of Detroit, and has invested a large sum of money in said business; that his business requires that he should know what taxes, levied by the city of Detroit, are liens upon property of which he is furnishing abstracts, and by

whom such liens, if any, are held; that when lands are sold for unpaid taxes, the sale is conducted by the receiver of taxes. A statement of such sales, in book form, is made by the receiver and turned over to the City Treasurer, in whose custody it thereafter remains. When sales are redeemed or city bids sold, such redemption is minuted in this book. That it is necessary in said relator's business to frequently consult this book. If proper facilities were granted him, he would not need to consult the same more than ten minutes in any one day. That the prevailing rule and custom is, in all the city and county offices, to permit all persons to have free access to the records therein, and he himself has ordinarily been allowed this privilege, without obstruction or restraint, except in the case of the respondent, who is City Treasurer of the city of Detroit.

That said respondent has frequently refused to permit relator to inspect the sales books above referred to, as have also his subordinates; and, if at times, an inspection of such records has been granted, it has always been accompanied with insulting language, implying that relator was taking time which belonged to the public, and that he must hurry, or that the books would be taken from him; and this, too, although no other parties were present to be waited upon or attended to, and though much more time was consumed by said treasurer in making such complaints than would be necessary for relator to inspect and make such memoranda as he needed, if he could have access to the records without unreasonable interruption. A clerk would be detailed to see that the relator did not mutilate the records, with instructions not to permit relator to take the books. But more frequently relator has been told by the said city treasurer and his subordinates, that he could not see the records. Respondent has followed this obstructive course for a long time, to the great annoyance and discomfort of relator, and in the face of the fact that there was posted in his office a notice to the effect that *all* information desired by the public would be cheerfully and promptly furnished. That respondent at one time informed relator that it was a matter of money with him, and that if relator would pay him twenty-five dollars per month, relator could have what access he pleased to the records in said treasurer's office.

July 2, 1889, relator called at the treasurer's office at about eleven o'clock, A. M., and requested the privilege of inspecting some of the sales books. Respondent asked if the information wanted was for relator's private business. Relator replied that Richard M. Coon was the owner of lot 24, in Wesson's section of the Thompson farm, in the city of Detroit, and that he had employed relator to see if certain tax sales, which had been previously made, were still held by the city, or disposed of, and if disposed of, to whom. Respondent requested relator to write out what he wanted on a piece of paper, which he did. The paper was handed to a clerk who was called by the respondent to wait on relator. The parcel of land had been sold in six successive years, and it became necessary to inspect six different sales books. That the statement which relator had made for the clerk, a copy of which he retained, informed the clerk the number of the book required, the page of the book and the line on the page which he desired to inspect. That said clerk produced four of the books required, and they were hastily inspected by relator, but he was not permitted to handle them.

During the examination, which could hardly have occupied ten minutes, respondent himself sat by, discussing the general subject of relator's rights, and apparently in no wise hurried by pressure of official duties. That after relator had inspected the fourth volume, said clerk—taking his cue from the language and actions of his employer, said respondent—abruptly, violently and unreasonably refused to produce the other two books requested, and left the room. That relator then asked the City Treasurer himself to produce the two books asked for, but said treasurer refused. Relator then told respondent that he would get the books himself, if he, respondent, would permit him, relator, to go into the room where said books were, for that purpose. Respondent told him he could not go into that room, and absolutely refused to permit him to see the books he desired. Relator offered respondent ten dollars per month to be accorded such treatment as is accorded to the public. Respondent refused the offer. Relator then formally demanded the right to inspect the two books he had asked for before, and reminded respondent of the Statute. Relator said

that if he could not see the books, he should ask for a mandamus. Respondent told him to "mandam," if he wanted to; that the books were in the vault, and relator could not see them, and that nothing but an order from the Common Council would make him remove them. He told relator to leave a written memorandum of what he wanted, and relator refused to do this, as he had already furnished respondent with one statement of what he required. Respondent became vociferous, declaring that he had disposed of the subject, refused to hear anything further, and left the room. Relator then, under the advice of counsel, made a new memorandum of what he wanted and offered it to the Deputy Treasurer, who said he had no time to attend to it. Relator told him he need not attend to it then, as he would send his clerk for it, laid the memorandum on the table, and placed a paper-weight upon it. Respondent came in about then, in a high temper, and with some profanity, ordered the relator out of the office, which order relator obeyed. During the whole time of this interview, there was no other person in the office on business, unless he was secluded in the private office of respondent.

The respondent, in his answer, denies that the books referred to by relator are public records, or that they are made so by charter, ordinance or law, or that they are required by law to be kept, or that relator or any person, except respondent, is entitled to the possession of said books, or entitled to take them out of the custody of respondent, or to make extracts from them, except under the immediate supervision of respondent. He denies that it is the universal practice in city offices to permit all persons desiring to inspect the said books to have free access to them, or that such is the usage, or that such usage has become so well established as to have the force of a common law custom. He denies that relator has been ordinarily allowed to inspect such books without obstruction or restraint, if by obstruction and restraint is meant a denial of the right of access to said books without the supervision of the city treasurer. He denies that the right which relator seeks to establish is recognized or confirmed by any act of the Legislature. He denies that at any time this respondent, or by this respondent's direction or authority, any deputy or clerk

in respondent's office has accompanied any inspection of the books which relator has been allowed to make, with insulting language. He denies that relator has been told by respondent that he, the relator, could not see the records. He denies that respondent has been guilty of obstructing relator. He denies that respondent derives an income from abstracts amounting to one thousand dollars per annum, or any such sum. He denies that this respondent has ever said, that if relator would pay respondent twenty-five dollars per month during his term of office, the relator could have whatever access he desired to the books in respondent's office. He denies that he made use of the profane expression alleged by relator.

Respondent also sets forth in his answer, that relator is seeking the information from the books as a matter of merchandise to sell to others. That up to July 2, 1884, abstracts could only be procured of the city treasurer, and that the treasurer whose office expired in 1884, realized from fifteen hundred to two thousand dollars annually from tax abstracts, and that he is informed relator paid such officer for the privilege of making a copy of the books of said office, and did make and use the same for private gain. That for one year prior to July 1, 1888, relator paid thirty-five dollars per month for this privilege. That respondent has always been ready and willing to give any lot-owner or citizen desiring it, information as to tax charges upon lands, and has always done so free of charge. He insists that he has the legal right to charge a small fee for making out abstracts, as there is no law requiring him to make them otherwise. That the books in question have been kept for the information and convenience of the city of Detroit, and are not required to be kept by the city charter or any law or ordinance.

That each year, after the Receiver of Taxes makes sale of lands for unpaid taxes, one of said books is made up by such Receiver, and entered therein is the name of the owner, if known; a description of each parcel of land; the amount of the city tax, school tax, etc.; the total tax; the name of the person to whom sold, which is usually the city of Detroit; and said books also contain blanks for entry of assignment or redemption; that there are in all thirty-seven books, con-

taining from one hundred to two hundred and fifty pages each. In addition, there are some sales books, containing memoranda of sales for unpaid special assessments. There are also sixteen (one for each ward) indexes to sales books, each of which contains a description of each parcel of land in that ward, with a column for each year, in which to enter, if sold, the number of the page of the sales book for that year containing the memoranda of the sale. If a sale has been cancelled, a red ink line is drawn through the reference figures; that the books so kept are easily subject to alteration or defacement.

That the books aforesaid are valuable, and the loss of the same, or any of the same, would be irreparable; that respondent is charged by the city with the care and custody of the same; that a portion of respondent's office is kept for the use of the public, and the public is necessarily, by means of desks, railings and wire work partitions, excluded from the private or working department of the office, and from the part containing the moneys, books and papers in respondent's office; that relator, in order to use the right which he here seeks to establish, must necessarily be admitted to that portion of respondent's office from which the general public is excluded; that the books referred to are kept by respondent in a vault in the City Treasurer's office, and in the same vault are other valuable books and papers, together with large sums of the city moneys, varying in amount from one hundred dollars to thirty thousand dollars; that to produce said books, and a number of them, as is often required by relator, requires a large amount of time almost daily, and from ten to thirty minutes per day have often been consumed in so doing; that respondent insists that it is the duty of respondent, in order to protect himself and his bondsmen, to keep their books under the immediate care, custody and supervision of himself or one of his trusted employees; that during the month of July, relator's purpose is not so much to look after individual cases of sales as it is to compare his minutes of sale with the office memorandum of the same. Respondent submits that he is not obliged to produce the books of his office, and supervise the inspection of the same, to one who is collecting information for merchandise, and that if he does do so, he is entitled to pay for it.

He also submits, that in other public offices—in the office of the Register of Deeds, in the Probate Court, and in the County Clerk's office—when information is furnished, which the law does not require to be furnished, charges are made, and legitimately, for such information. He also shows that he has given bond for the safe keeping of these records; that his total fees for abstracts for eleven months, ending December 31, 1888, were but two hundred and forty-three dollars. And he finally submits, that relator is not entitled to access to the books of respondent's office at his own pleasure; neither is he entitled to frequent, or enter into, that portion of respondent's office from which the general public is excluded; that respondent is entitled to supervise the examination of the books in his office, and that the relator, as a dealer in information, is not entitled to compel respondent to give his time to relator, at the pleasure of relator, for his gain and without compensation to respondent.

It is evident, from the petition and answer, that there is more or less of ill-feeling between these parties; and it is also clear that the relator has been, in fact, denied free access to these sales books, and that the respondent does not propose to permit such access unless he is paid therefor; nor does he propose to furnish any facilities, reasonable or otherwise, to the relator to inspect and examine said books, without pay.

This right of relator, claimed under the Statute, is denied, *first*, on the ground that these books are not public records, because there is no express statutory provision, anywhere, that such books shall be kept.

These books are made up, in the first place, by the Receiver of Taxes, and by him handed over to the City Treasurer. They are, therefore, books used and kept in two of the public offices in the city of Detroit, and they must be considered public records. The claim that they are private books of account is absurd. They are neither the private books of the Receiver of Taxes nor of the City Treasurer, and the city of Detroit, a public municipal corporation, can have no private books, not even of accounts, not open to the inspection of its citizens. Its doings, and the doings of its officers, and the records and files in their offices, must be open to the public,

nor can fees be charged for such inspection to those having the right to examine and inspect such files and records.

But the broad ground is also taken that the relator has no lawful right to inspect these sales books without recompense to the respondent, because he is an abstract maker, and his business may be, and is, in most cases, to sell to some person the information gained by such examination; that he does not come under the statute, because he does not have "occasion to make examinations of them for a lawful purpose;" and that this case is covered, and against relator, by two former decisions of this Court: *Webber* v. *Townley* (1880), 43 Mich. 534; *Diamond Match Co.* v. *Powers* (1883), 51 Id. 145.

If I understand the latter case, the writ of mandamus was denied because the Diamond Match Company was not a citizen, nor an inhabitant, nor even a domestic corporation. It did not show its charter, nor give any evidence of its powers or artificial capabilities. This Court say:

"We have no reason of knowing that it has capacity to buy lands, or hold them, or deal in titles anywhere, or to carry on the business in which its petition alleges it to be engaged; or to apply itself to such an enterprise as making a system of abstracts of all the titles of all the real property in a county. The case is bare of information in regard to the true legal status of the relator, and as to whether it is other than a mere intruder in what it demands."

The petition of the relator alleged that it was incorporated under the laws of the State of Delaware; that it had become the purchaser of about thirty thousand acres of pine land in the county of Ontonagon, had erected extensive saw mills and invested nearly two hundred thousand dollars, and was cutting large quantities of pine and constantly purchasing more land, and to provide against acquiring defective titles, desired to protect its rights and interests by providing for itself an abstract of all the lands in the county. The relator was permitted opportunity to examine and make abstracts as far as its own ownership or interest was concerned, present or prospective, but the dispute was whether it had the right to go further and insist on having office accommodations and the handling of all the records, to make an abstract of title to all the lands in the county. While the writer of the opinion, Chief Justice GRAVES, paused to make some practical suggestions of obsta-

cles in the way of proper relief being afforded by mandamus, the ground of the denial of the writ was that the relator had failed to show any title to the right it claimed, because the authority given to it by the State by which it was created was not disclosed, and could not be assumed. See *Diamond Match Co.* v. *Powers* (1883), 51 Mich., at pages 147, 148. In the view of the case above cited, I do not think that it is any authority bearing against the relator's claim in this case.

And I cannot agree with the opinion of this Court, or the reasons given for it, in *Webber* v. *Townley*, *supra*. Nor do I anticipate that hardly any, if any, of the results imagined by the writer of that opinion, would ever occur, if the holding were otherwise. If any of them should happen, the law is powerful enough to remedy them, and "Sufficient unto the day is the evil thereof."

I do not think that any common law ever obtained in this free government that would deny to the people thereof the right of free access to and public inspection of public records. They have an interest always in such records, and I know of no law, written or unwritten, that provides, that before an inspection or examination of a public record is made, the citizen who wishes to make it must show some special interest in such record. I have a right, if I see fit, to examine the title of my neighbor's property, whether or not I have any interest in it, or intend ever to have. I also have the right to examine any title that I see fit, recorded in the public offices, for purposes of selling such information, if I desire. No one has ever disputed the right of a lawyer to enter the register's office and examine the title of his client to land as recorded, or the title of the opponent of his client, and to charge his client for the information so obtained. This is done for private gain as a part of the lawyer's daily business, and by means of which, with other labors, he earns his bread. Upon what different footing can an abstractor—can Mr. Burton—be placed within the law, without giving a privilege to one man, or class of men, that is denied to another?

The relator's business is that of making abstracts of title and furnishing the same to those wanting them, for a compensation. In such a business it is necessary for him to consult and

make memoranda of the contents of these books. His business is a lawful one, the same as is the lawyer's, and why has he not the right to inspect and examine public records in his business as well as any other person? If he is shut out because he uses his information for private gain, how will it be with the dealer in real estate, who examines the records before he buys or sells, and buys and sells for private gain? Any holding that shuts out Mr. Burton from the inspection of these records, for this reason also shuts out every other person, except the buyer, seller, or holder of a particular lot of lands, or one having a lien upon it, or an agent of one of them, acting as such agent without fee or reward. It cannot be inferred that the Legislature intended that this statute should apply only to a particular class of persons, as, for instance, those only who are interested in a particular piece of land. "Any person" means all persons.

I can see no danger of great abuses, or inconveniences, likely to arise from the right to inspect, examine, or make note of public records, even if such right be granted to those who get their living by selling the information thus gained. The inconvenience to the office is guarded against by the statute, which authorizes the incumbent to make reasonable rules and regulations with reference to the inspection. And when abuses are shown, there will no doubt be found by the Legislature, or the courts, a remedy for them.

It is plain to me that the Legislature intended to assert the right of all citizens, in the pursuit of a lawful business, to make such examination of the public records in public offices as the necessity of their business might require, subject to such rules and restrictions as are reasonable and proper under the circumstances.

The respondent in this case is the lawful custodian of these sales books, and is responsible for their safe keeping. And he may make and enforce proper regulations, consistent with the public right, for the use of them. But they are public property, for public use, and he has no lawful authority to exclude any of the public from access to and examination and inspection thereof at proper seasons. It follows that he has no right to demand any fee or compensation for the privilege of access

to the records, or for any examination thereof, not made by himself or his clerks or deputies. He has no exclusive right to search the records, as against any other citizen: *Lum* v. *McCarty* (1877), 39 N. J. L. 287; *Boylan* v. *Warren* (1888), 39 Kan. 301; *Cole* v. *Rachac* (1887), 37 Minn. 372; *German Loan and Trust Co.* v. *Richards* (1885), 99 N. Y. 620; *Hanson* v. *Eichstaedt* (1887), 69 Wis. 538.

It follows, in my opinion, that the prayer of the petitioner must be granted, and the writ issue as prayed, the relator asking in this writ no more than the statute gives him.

CHAMPLIN, J., concurred.

CAMPBELL, J.: I think relator has such an interest as entitles him, under the law of 1889, to see the book in question, and confine my opinion to that point.

SHERWOOD, C. J., and LONG, J., did not sit in this case.

This annotation is confined to a discussion of the statutes, and decisions thereunder, of the various States, where abstract companies and private persons have sought the free and constant use of the public records, in the course of compiling and keeping up, for profit, a statement of all the titles to land, in a city, township, county, or other local division of a State: that is—

Alabama, pp. 64, 66.
Colorado, p. 67.
Georgia, pp. 64, 67, 68.
Kansas, pp. 63, 66.
Michigan, pp. 49, 65, 67.
Minnesota, p. 62.
New Jersey, pp. 60, 65, 67.
New York, p. 66.
Pennsylvania, p. 65.
Wisconsin, pp. 61, 68.

The public nature of the public records of private documents was well explained in one of the decisions cited in the principal case. "The [county] clerk is the lawful custodian of the records, and indexes thereto, and is responsible for the safe keeping thereof. His powers over them are such as are necessary for their protection and preservation. To that end, he may make and enforce proper regulations, consistent with the public right, for the use of them. But they are public property, for public use, and he has no lawful authority to exclude any of the public from access to, and inspection and examination thereof, at proper seasons, and on proper application. The clauses which declare the public right in this behalf, employ the most comprehensive and general language: 'All persons desiring to examine the same,' 'Every person shall have access,' etc. It follows that the clerk has no right to demand any fee for the privilege of access to the records and indexes, or for any examination thereof, not made by himself or his assistants. He has no exclusive right to search the records:" RUNYON, C., *Lum* v. *McCarty* (1877), 39 N. J. Law 287, 290. The party refused was an attorney, not engaged in abstracting, and had been refused access to the records until he paid, under protest, the fees chargeable if the clerk had made the search. This suit was to recover the sum paid, and was successful.

The New Jersey Statutes, under which

the aforegoing case was decided, provide (Revision of 1877, p. 157)—"25. That the clerk of the Court of Common Pleas of the county shall record, in large, well-bound books of good paper, to be provided for that purpose and carefully preserved, all deeds and conveyances of lands, tenements and hereditaments, lying and being in the said county, acknowledged or proved, and certified to have been acknowledged or proved in manner aforesaid, which shall be delivered to him to be recorded; and, also, all other instruments which are by this Act directed therein to be recorded; to which books every person shall have access at proper seasons, and be entitled to transcripts from the same, on paying the fees allowed by law."

And (Id. 705)—"17. The clerk of the Court of Common Pleas of every county of this State shall, from time to time, provide fit books, well bound and lettered, for registering all mortgages and defeasible deeds in the nature of mortgages, of lands, tenements and hereditaments, lying and being within his county, in which shall be entered the names of the mortgagor and mortgagee, the date of the mortgage, the mortgage money and when payable, and the description and boundaries of the lands, tenements, and hereditaments, mortgaged; that the said clerk shall, immediately on receiving the said mortgage, make the said entry or abstract in the register, and shall note in the margin, or at the foot of such abstract, the day of the month and the year when the said mortgage was delivered to him or brought to his office to be recorded; to which book every person shall have access at proper seasons, and may search the same, paying the fees allowed by law."

Another of the citations in the principal case, would seem to indicate that at least one public officer was made to feel his duty, first, by the action of the individual, and then, by the denial of an injunction to restrain the abstractor: *Hanson* v. *Eichstaedt* (1887), 69 Wis. 538.

The Revised Statutes of Wisconsin (chap. 37, p. 247,) provide—"SECTION 700. Every sheriff, clerk of the circuit court, register of deeds, county treasurer and county clerk, shall keep his office at the county seat, and in the office provided by the county or by special provisions of law; if there be none such, then at such place as the county board shall direct; and shall keep such office open during the usual business hours each day, Sundays and legal holidays excepted; and with proper care, shall open to the examination of any person, all books and papers required to be kept in his office, and permit any person so examining, to take notes and copies of such books, records or papers, or minutes therefrom; and if any such officer shall neglect or refuse to comply with any of the provisions of this section, he shall forfeit five dollars for every day such noncompliance shall continue. Actions for the collection of the forfeiture herein provided, may be brought in all cases of such refusal or neglect, in the manner provided by law, upon the complaint of the district attorney of the proper county, or of any party aggrieved by such neglect or refusal."

Commenting on this section, CASSODAY, J., said—"This language, literally construed, certainly includes the defendant. The words 'any persons,' when so construed, are distributive, and include every person. By what authority, then, are we to construe these words as only applicable to a particular class of persons, as, for instance, those only who are interested in the particular piece of land, the record of which is sought to be inspected or copied? If so, how is the fact of such interest to be determined—by the applicant, or by the register? Is the register to accept, without question, the statement of the

applicant, or may he require other evidence? Of course, every statute is to be construed with reference to its object and subject-matter; and in that way, it frequently occurs that general words are limited in their operation: Wilb. Stat. Laws, 173–177. Here the subject-matter is the examination of the public books and records in the register's office, and the taking of notes, minutes, and copies therefrom; and the statute requires the register, under a penalty, to permit any person to so examine and take notes, minutes and copies. Under such a statute, can we say that when a respectable person, in a respectful manner, applies to the register to make such examination, etc., he is to be excluded, merely because he does not belong to some class of persons unnamed or undefined in the statute; or, if permission is given, is his examination, etc., to be confined to lands in which he, or his clients, have a present pecuniary interest."

And distinguishing the Alabama and Michigan cases (*infra*, pp. 64, 57), the same judge said—"On the contrary, we must hold that our statute in question extends such right of examination, etc., to 'any person' applying to such custodian of public records in a proper manner; subject, however, to the payment of fees, when allowed, and such reasonable supervision and control by such officer as are essential to the convenient performance of his duties and the current business of the public. It may be that more definite regulations should be made in such matters, but that is a question for the Legislature, and not for us."

Another citation in the principal case is valuable as recognizing the object in view of the Legislature in passing the statute: *State ex rel. v. Rachac* (1887), 37 Minn. 372. Here the Court decided that those who are in the business of making and furnishing abstracts of title to others for compensation, along with other persons, whether interested in such records or not, all alike, have the right to examine and abstract the records of the register of deeds, in the manner provided by Gen. Stat. 1878, c. 8, § 179, as amended by Laws of 1885, c. 116; that is (Gen. Stat., vol. 2, p. 133)—"§ 179. The register shall exhibit, free of charge, during the hours that his office is, or is required by law to be open, any of the records or papers in his official custody, to the inspection of any person demanding the same, either for examination or for the purpose of making or completing an abstract or transcript therefrom; provided, that whenever, in the opinion of the board of county commissioners, it is for the benefit of the people of their county, that any person, company or corporation, who has or may have a set of abstracts of title, should be permitted to occupy any part of the county building for an office, such board may, by resolution, give such person, company or corporation permission so to do. And in every such case, such board shall require of such person, company or corporation a bond in a sum not less than five hundred dollars, nor more than five thousand dollars, with two or more sureties, to be approved by the commissioners, conditioned that such person, company or corporation will handle all public records belonging to the county with due care, and will not charge any greater fee for making abstracts than is or may be allowed the register of deeds for like services and for the faithful performance of his duties as an abstractor: provided further, that nothing contained in this act shall be construed as giving any person the right to have or use the said record for the purpose of making or completing an abstract or transcript therefrom when it would interfere or hinder the register of deeds in the performance of his official

duties, or as permitting any person to take any of said records from the register of deeds' office without his consent. But no register of deeds is bound to record any deed, mortgage or other instruments unless the fees therefor are tendered him in advance."

Commenting upon the amendatory act, MITCHELL, J., said—"While its operation is not confined to those engaged in the so-called 'abstract business,' yet, in its language and general scope, it shows that these were prominently in the mind of the Legislature. The original statute gave to every one demanding it, the right 'to inspect' these records. But, as there might be doubt what the rights of inspection included, the amendment adds, 'either for examination or for the purpose of *making or completing an abstract or transcript therefrom.*' As indicating what and whom the Legislature had in mind, the act further provides, that the county commissioners may permit any person having a set of 'abstracts of title' to occupy a part of the county building for an office:" 37 Minn. 374.

Where the question was decided adversely to the right of an abstractor to make copies of the entire records of the office of a register of deeds (*Cormack* v. *Wolcott*, 1887, 37 Kan. 391), CLOYSTON, C., admitted that the question was an embarrassing one, and that the Court was "not free from doubt. At common law, parties had no vested rights in the examination of a record of title, or other public records, save by some interest in the land or subject of record. So no authorities at common law can throw any light upon this question—the practice of making abstract records being of more recent date:" p. 394. This decision was affirmed in *Boylan* v. *Warren* (1888), 39 Kan. 301, to the extent that the register of deeds will not be compelled by mandamus to permit any person to make copies of the entire records in his office, for the purpose of making a set of abstract books for private use or speculation. "The refusal of the officer in charge, to permit a person to gratify a mere idle curiosity, or to examine the records for the mere purpose of taking copies or *memoranda* thereof, for some supposed possible use in the future, or to examine the records, when they are otherwise rightfully and properly in use by some other person, cannot constitute a basis for any kind of action. Some present and existing *right* of a person must be infringed to the *injury* of such person, before any cause of action of any kind can accrue in his favor:" VALENTINE, J., p. 305.

These decisions were based upon Art. 15, c. 25, Comp. Laws of Kansas, 1881, which provide—"SEC. 172. Every county officer shall keep his office at the seat of justice of his county, and in the office provided by the county, if any such has been provided; and if there be none established, then at such place as shall be fixed by special provisions of law; or, if there be no such provisions, then at such place as the board of county commissioners shall direct, and they shall each keep the same open during the usual business hours of each day (Sundays excepted); and all books and papers required to be in their offices, shall be open for the examination of any person; and if any of said officers shall neglect to comply with the provisions of this section, he shall forfeit, for each day he so neglects, the sum of five dollars: *Provided*, That in counties of less than five thousand inhabitants, the probate judge shall not be compelled to keep his office open at the county seat, except at the regular term, except the county commissioners shall so order."

But still, in the latter case (*Boylan* v. *Warren*), the Court was careful to say: "Before closing this opinion, it

would, perhaps, be proper to state that 'any person,' even an abstracter of titles, who may have sufficient interest in the information to be obtained from the public county records to entitle him to an examination of the same, may, if he chooses, make copies, abstracts, extracts, or *memoranda* therefrom. There is no statute and no good reason against it:" p. 307.

The same denial of inspection of the records of a probate judge, on the ground that the purpose was speculative, or from idle curiosity, was reached in *Randolph* v. *The State* (1886), 82 Ala. 527, 529. The relators were abstracters and desired to abstract all the titles to real estate in the county, claiming a right so to do under section 698 of the Code of 1876 (Code of 1887, chap. 5, p. 235)—"791. (698.) The records of the office [of the judge of probate] must be free for the examination of all persons, when not in use by the judge." The same chapter also provides—"789. (695.) It is the duty of the judge of probate,—7. On application of any person, and the payment or tender of the lawful fees, to give transcripts of any paper, or record, required to be kept in his office, properly certified."

In deciding this case of *Randolph* v. *The State*, the Court felt bound to limit their previous decisions in *Brewer* v. *Watson* (1882), 71 Ala. 299, and *Phelan* v. *The State* (1884), 76 Ala. 49; these decisions related to other offices, not open to free statutory examinations. Here the Court thought it expedient to point out that they had not had before them the claim of right to make memoranda, and said: "We must not, however, be understood as intending to abridge the right, conferred by statute, of 'free examination,' by all persons having an interest, of the records of the probate judge's office. Nor will we confine this right to a mere right to inspect. He may make memoranda, or copies, if he will, and, to this end, may employ an agent or attorney. The limitation is, that he must not obstruct the officers in charge in the performance of their official duties, by withholding records from them when needed for the performance of an official function. Nor is this right of examination confined to persons claiming title, or having a present pecuniary interest in the subject-matter. It will embrace all persons interested, presently or prospectively, in the chain of title, or nature of incumbrance, proposed to be investigated. The right of free examination is the rule, and the inhibition of such privilege, when the purpose is speculative, or from idle curiosity, is the exception:" 82 Ala. 529.

The same sentiments were expressed in *Buck & Spencer* v. *Collins* (1874), 51 Ga. 391. In this State, the Code provides (ed. 1882, p. 9)—"§ 14. All books kept by any public officer under the laws of this State, shall be subject to the inspection of all the citizens of this State, within office hours, every day, except Sundays and holidays." This was enacted in 1831, long before the days of abstracts and other modern conveniences; and the Court (opinion by McCAY, J.,) denied the right to make the abstracts, as "a perversion of the purpose for which the books are kept. * * * It is an unnecessary flaunting of private matters before the public gaze:" Id. 394.

The absence, at common law, of any general or public right of inspection of public records [1 Greenlf. Ev. §§ 473–5], was also made the foundation of the overruled case of *Webber* v. *Townley* (*supra*, p. 57), in Michigan. MARSTON, C. J.: "The right to an inspection, and copy, or abstract of, a public record, is not given indiscriminately to each and all who may, from curiosity or otherwise, desire the same, but is limited to those who have some interest therein. What

that interest must be, we are not called upon, in the present case, to determine. The question has usually arisen where the right claimed was to inspect, or obtain a copy, of some particular document, or those relating to a given transaction, or title. We have not been referred to any authority which recognizes the right of a person, under the common law, to a copy, or abstract, of the entire records of a public office, in which [as in this case] he had no special interest, the object in view being simply private gain from the possession and use thereof. The object sought by the relators may be considered as of such modern origin as not to have been contemplated, or covered, by the common law authorities relating to the inspection of public records, and the reason upon which those authorities rest, would exclude relators from the right claimed:" p. 537.

The Court made no citations, but the more important of the citations of counsel may be found in one of them: *State* v. *Williams* (1879), 41 N. J. Law 332; S. C., 19 AMER. LAW REGISTER 154.

As *Webber* v. *Townley* was decided under the Act, No. 54, approved March 26, 1875 (Laws, p. 51), it is only necessary to add that this Act differs from the Act of 1889 only in the words "registers of deeds in this State" throughout the Act, and the use of "may" for "shall" in the last proviso.

The only reasonable ground for the refusal, by a servant of the people, of public information to any citizen, was expressed by GRAVES, C. J., in the *Diamond Match Co.* v. *Powers* (*supra*, p. 57)—"A single consideration of a practical nature may be suggested here. Granting that no other difficulties appear, it seems evident that, in any case where the claim is for a continuous use of the record office and its public contents, from day to day, and week to week, and not merely for a single occasion, with all its material facts defined, there must be great, if not insuperable, difficulty in enforcing the claim by mandamus. The register [of deeds of the county] has rights and duties which must be respected; so the general public have rights as well as the claimant; and the conditions are not steadily the same. They are subject to variation. On every occasion, each must act reasonably, and with proper regard for the rights and duties of the others."

In the City of Philadelphia, the records of the Recorder of Deeds have been examined three times, and those of the Register of Wills and the Prothonotary of the Courts, twice; though with much wear upon the books for the time, still, on the whole, with little inconvenience above those inseparable from the use of the record books by a large number of persons at once. This occurred chiefly from a spirit of accommodation shown after the decision by the local Court of Common Pleas (No. 2) in *Comm. ex rel.* v. *O'Donnel* (1882), 12 W. N. C. (Pa.) 291; S. C., 15 Phila. 197, where the Recorder of Deeds refused to a title insurance company immediate information of the filing for record of every deed or writing brought into his office, on the ground that the company used the information to issue certificates of search in rivalry with those issued by the Recorder, and those reducing the aggregate of the fees paid into the city treasury. But the Court awarded a peremptory mandamus. The case turned almost entirely upon the right of the title company, along with other citizens, to purchase a certificate of all deeds and writings filed for record, immediately after their filing. The ordinary certificates of search were usually three or four days behind the legal period of recording.

In the case overruled (*Webber* v. *Townley*, *supra*, p. 58), MARSTON, C. J., thought that he expressed some other reasons for denying access to the records,

when, conceding to the relators the right to abstract the entire records of a public office, he asserted the same right belonged to all persons, without restriction of residence, "so that the result may be more applicants than the register's office could afford room to. * * * * And, as the use of the public records cannot thus be handed over to the indiscriminate use of those not interested in their future preservation, how shall the register protect them from mutilation?" Very much the same sort of language was used by CLOYSTON, C., in *Cormack* v. *Wolcott* (*supra*, p. 63), and by STONE, C. J., *Phelan* v. *The State* (1884), 76 Ala. 49, 51.

But such reasons are obviously so in theory only, and were practically answered in the principal case: (*supra*, p. 59), as well as in *The People ex rel.* v. *Richards* (1885), 99 N. Y. 620, where the register set up that he had given accommodation to three employes of the title company, and had no room for more. The statute of that State provides that such records shall "at all proper times be open for the inspection of any person paying the fees allowed by law" (chap. 410, Act July 1, 1882, § 1759; also §§ 1742, 1747 and 1751). The Court sustained the refusal, saying: "He must transact the current business of the office, and allow all persons reasonable facilities to exercise their rights in his office. * * He must have some right to say how many persons the relator could send there, to work at one time:" EARL, J., p. 623.

Commenting upon the Act of 1882, DANIELS, J., declared that "The obligation imposed upon the register, to permit the books, records, and maps of the office to be examined, is absolute in its character. * * * * The duty imposed upon him, in this respect, is entirely ministerial, and its observance may be lawfully required through the instrumentality of the writ of *mandamus*. * * It is not his duty to permit the office to be thronged needlessly with persons examining its books or papers, but it is his duty to regulate, govern and control his office in such a manner as to permit the statutory advantages to be enjoyed by other persons not employed by him as largely and extensively as that consistently can be done. He has no property in these books or papers, but is their mere custodian, whose duty it is securely to preserve and maintain them for the benefit, advantage and convenience of the public. And, in the exercise of his discretion, it should undoubtedly be done with a view to securing these ends. It cannot be made the pretense or excuse for the arbitrary exclusion of any person from his office, whose duties require their services there. What the law expects and requires from him is the exercise of an unbiased and impartial judgment, by which all persons resorting to the office, under legal authority, and conducting themselves in an orderly manner, shall be secured their lawful rights and privileges, and that a corporation formed in the manner in which the relator has been shall be permitted to obtain all the information, either by searches, abstracts, or copies, that the law has entitled it to obtain:" *People ex rel.* v. *Reilly* (1886), 45 Hun (N. Y.) 429, 434.

The objection arising from a reasonable use of the public records by a number of citizens, was thus effectually answered in a case of a mere citizen and the records of a street commissioner, by BARNARD, J., in *The People* v. *Cornell* (1866), 47 Barb. (N. Y.) 329, 334: "It would be very inconvenient to allow every citizen that chooses so to do, to come into the office and inspect documents, and make copies of them; and it is suggested that if they be allowed so to do, larger accommodations and larger clerical force would be required. I do not understand that there is any

very serious difficulty in procuring larger accommodations and more clerical force, if that should be found necessary. But this is a mere anticipated difficulty, which I apprehend will not practically occur. If it should occur, I see no difficulty in providing means to remove it."

Contrary to a right of reasonable use of the public records, is *Bean* v. *The People* (1883), 7 Col. 200. The claim of right to abstract the entire records of a county was denied, though no aid was required from the recorder; "for he is charged by statute with the *safe keeping* and *preservation* of the records, and is responsible for their truthfulness, and freedom from mutilation:" HELM, J., p. 201. Not that the Court insinuated either generic or individual traits of mutilation, because the opinion proceeds: "We think the business of relators [who were abstracters] should be treated as any other legitimate [sic] private enterprise. There is no law to prevent the clerk aiding them, if he chooses so to do, either gratis, or for a stipulated compensation; provided he does not neglect his official duties. But the Court should not, by *mandamus*, compel him to do this against his will:" p. 202. This is the same sort of argument so well answered by the Scripture quotation in the principal case (p. 58, *supra*).

This decision, however, is based upon the interpretation of the General Statutes of the State (chap. xxiii, p. 285, ed. 1883), which provide—"SEC. 667. Every sheriff, county clerk, county treasurer and county judge, shall keep his office at the county seat of his county, and in the office provided by the county, if any such place has been provided; and if there be none established, then at such place as shall be fixed by special provision of law; or, if there be no such provision, then at such place as the board of county commissioners shall direct; and they shall each keep the same open during the usual business hours of each day, Sundays and legal holidays excepted, and all books and papers required to be in their office, shall be open for the examination of any person; and if any person, or officer, shall neglect to comply with the provisions of this section, he shall forfeit, for each day he so neglects, the sum of five dollars."

The Court said—"We feel confident that an examination of the statute is proper, with the view of determining whether or not the Legislature intended to grant the privilege here claimed." And after stating fear for the integrity of the records, "We are of opinion that the statute in question was not designed to allow individuals who wish to abstract the *entire records*, for future profit in their private business, the privilege of using continuously the public property, and of monopolizing, from day to day, for months and years, a portion of the time and attention of a public officer, against his will, and without recompense. In support of the foregoing reasons and conclusions, see *Buck* v. *Collins* (*supra*, p. 64), and *Webber* v. *Townley* (*supra*, p. 58),"—pp. 200, 202.

The same sentiments were expressed by HAINES, J., in deciding *Fleming* v. *Clerk of Hudson County* (1863), 30 N. J. Law 280, 281; but this was in the Supreme Court, and the Court of Errors and Appeals ruled the other way in *Lum* v. *McCarty* (*supra*, p. 60).

The same unnecessary fears for the safety of records inspected "under the watchful observation of the clerk," without paying the fees prescribed in the Code, were expressed in *Buck & Spencer* v. *Collins* (*supra* p. 64). In that State (Georgia), Section 3695 of the Code (ed. 1882, p. 949), prescribes the fees for "exemplification of record * * * for inspection of books, when their [the clerks of the Superior Courts] service is required, * * * for examination

of record and abstract * * ." This part of the fee bill, "by implication, permits any citizen to make an inspection, without fee, if he does not require the clerk's aid: * * * All laws are to be reasonably construed, in view of the object of them, and in view of other laws. The object of this permission to *inspect*, without fee, if no *aid* is required from the clerk, is plain. It is contemplated that lawyers, public officers and persons familiar with the books, by having frequent occasion to use them, may not need the clerk's assistance for the purpose. And, by implication, this permission contemplates that the clerk shall, in such cases, make no charge for simply standing by and noticing that no improper interference with the record is had. But there is nothing in this implication (and that is all it is, at best) which authorizes the clerk to permit even an inspection, except in his own presence, or in the presence of his sworn deputy. He is required [Code, ed. 1882, p. 68], section 267 [9], "To keep all the books, papers, dockets and records, belonging to their [his] office, with care and security, * * * * ." He *cannot* do this, if any person may handle or inspect them, otherwise than under his own eye. In our judgment, any clerk would be guilty of a failure in his official duties, should he permit any person, if only for a minute [sic], though he might be familiar with the books, and be able to examine them without the clerk's aid, to have the custody of the books and papers of his office. * * * It is a perversion of the right of inspection, evidently intended to provide for examinations from time to time, as the ordinary occasions and business of men may require, to make a business of it. The law might well, in view of the ordinary wants of the people, permit an inspection of the books, when no aid is required from the clerk, without a fee. It is but a slight hindrance to him in his duties to keep his eye on the few citizens who visit his office for such purposes, and if he has only to stand by as a sentinel to prevent fraud or spoliation, for a minute or two, it is but a small matter, and may well be without a fee. But the law never contemplated that any person would make a business of it—spend days and weeks in the office engaged in an occupation which, in our judgment, cannot lawfully be carried on except under the immediate observation of the clerk. Fees are given for *each* inspection, *each* abstract. The law has in view the inspection of one chain of title—the *status* of one man—and fixes a fee for that:" 51 Ga. 395, 396.

When *Bean* v. *People* was cited to the Wisconsin Court, in *Hanson* v. *Eichstaedt*, a distinction was suggested by CASSODAY, J. (69 Wis. 541–2), based upon the fee bill of the several clerks and recorders (Gen. Stat. Colorado, p. 268, SEC. 584); hence, the abstracting of the entire records, if permitted would compel the recorder "to aid in building up a rival establishment, which would necessarily reduce the emoluments of his office, and without any statute, in terms, requiring him to do so:" Id. 69 Wis. 542.

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